

# 7



Uniting Church in Australia  
Synod of NSW and the ACT

## **SECTION 7— MISCELLANEOUS OBLIGATIONS**



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### Miscellaneous Obligations

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## 1. Unsafe Buildings—Regulations

- 1.1 In accordance with the Regulations, the Executive Director Uniting Resources (as the Synod Property Officer) or the General Secretary of the Synod have the power to do any or all of the following. This applies to any property within the bounds of the Synod that is owned by the Property Trust or any body of the church (unless it must comply with a government regulation or requirement or is reported as being in an unsafe or dangerous condition).
- a) temporarily or permanently close any building;
  - b) obtain a professional audit or report in relation to the state of the property or any activity conducted thereon;
  - c) ensure that work is undertaken to make safe or obtain compliance;
  - d) require repayment by the body having oversight of the property of any amount expended by the Synod in relation to an unsafe building or property;
  - e) after consultation with the body having the oversight of the property recommend to the Synod Standing Committee:
    - disposal of the property where it is impossible or impracticable to make the property safe or to rectify the non-compliance;
    - demolition of any building, or;
    - future use of the property.
- 1.2 The Synod Standing Committee has the power to determine, or to delegate to UR the right to determine, matters relating to the use or disposal of property or demolition of any building when a recommendation is made, pursuant to 1.1 above.

## 2. Indemnity—Regulations

- 2.1 In accordance with the Regulations:
- a) Any person acting under the express or implied authority of the church and who is not an independent contractor shall be indemnified out of trust property against all liability for any matter or thing done or liability incurred except in the case of fraud, criminal act, gross negligence or wilful misconduct.

- b) Without detracting from the generality of (a), a member of a church council or other body responsible for the management and administration of property shall be indemnified out of trust property against liability for any matter or thing done or liability incurred in the performance of functions as a member thereof except in the case of fraud, criminal act, gross negligence or wilful misconduct.

### 3. Custody Of Deeds—Regulations

- 3.1 In accordance with the Regulations, all deeds and documents of title relating to trust property shall be placed in the custody of URPS.

### 4. United Work—Regulations

- 4.1 In accordance with the Regulations, a responsible body may make property available for the purposes of united work with any other denomination or denominations upon such terms and conditions as may be approved from time to time by UR and/or the Synod Standing Committee.

### 5. Furnishing Information—Regulations

- 5.1 In accordance with the Regulations, a responsible body shall furnish such information regarding property affairs, including audited accounts, as the Presbytery or UR or any body so authorised by either of them requires from time to time.

### 6. Register Of Properties—Regulations

In accordance with the Regulations:

- a Register of Properties shall be kept by URPS; and

- the register shall be kept updated and shall be made available for inspection by any member of a responsible body, or the chairperson or secretary of presbytery, the Moderator or Executive Director UR, or any person authorised by any of them.

## 7. Returns—Regulations

- 7.1 In accordance with the Regulations, each responsible body shall furnish such returns to presbytery and URPS as shall be prescribed by the presbytery and URPS respectively.

## 8. Memorial Items And Plaques Of Remembrance

- 8.1 The construction of new or the expansion of existing columbaria on church property will not be permitted.
- 8.2 Memorial items which are included in the building fabric of church property are not encouraged. Where existing memorial items are included in building fabric, next of kin are required to acknowledge that the Synod may alter, relocate or remove these items where the removal is in the interests of the Synod.

## 9. Property Maintenance And Administration

- 9.1 The direct responsibility for the maintenance of property and ensuring that all conditions for approval where applicable are satisfied rests with the responsible body and their delegated representatives, which are usually a property sub-committee or administrator or officer.
- 9.2 The maintenance and upkeep of any minister's residence is also a direct responsibility of the parties referred to in 9.1 above. The upkeep of the minister's residence should be reviewed at least annually in consultation with the minister in placement.

- 9.3 A Maintenance Fund specifically dedicated to the upkeep of the property should be established and form part of the responsible body's budget process each year. This should be based on a properly formulated Maintenance Schedule—this may require professional advice or the assistance of URPS.
- 9.4 The minister is personally responsible for the payment of utility costs, such as but not limited to electricity, gas and excess water, where it directly relates to the minister's residence.
- 9.5 All other costs associated with the ownership of property, such as but not limited to water rates, insurance, maintenance and upkeep, are the responsibility of the parties referred to in 9.1 above and they have the responsibility to ensure all outgoings are paid.

## 10. Carbon Reporting

- 10.1 National Greenhouse and Energy reporting is governed under the National Greenhouse and Energy Reporting Act 2007 ("the Act") and other related legislative and regulatory requirements.
- 10.2 Under the Act there is an obligation for corporations to register in relation to meeting a threshold, predetermined by the corporation in any financial year.
- 10.3 A registered corporation such as the Property Trust must provide a report each financial year relating to the following:
- greenhouse gas emissions; and
  - energy production; and
  - energy consumption.
- 10.4 In complying with the reporting requirements under 10.3 above, the Property Trust must report on the above matters for every church body within the bounds of the Synod.
- 10.5 Under the Act, a controlling corporation such as the Property Trust may be liable for an additional civil penalty that can be levied for every day and at the conclusion of any period where it fails to provide a report, fails to apply to register or comply with other audit requirements.
- 10.6 In order to fulfil its obligations, the Property Trust, URPS, is required to collect and collate data from all church bodies regarding electricity, gas, vehicle and petrol usage. It is therefore imperative that all church bodies provide this data to URPS as soon as it is requested in order to avoid being non-compliant and incurring penalties.

## 11. Asbestos And Hazardous Materials (Hazmet) Reporting

- 11.1 Where asbestos is identified as being present in commercial premises it is a statutory obligation for an annual inspection to be undertaken on the property and an asbestos materials register to be maintained.
- 11.2 Under the code of practice for the Management and Control of Asbestos in Workplaces (NOHSC:2015)(2005) the asbestos materials register including any risk assessments must be reviewed annually or earlier where:
- A risk assessment indicates the need for reassessment;
  - Any Asbestos Containing Materials (ACM) have been disturbed or removed.
- 11.3 The asbestos materials register must be integrated within an asbestos management plan. The periodic review of asbestos inspections and surveys must be outlined in the asbestos management plan.
- 11.4 The asbestos management plan is normally an annual process but is to be invoked earlier where a significant disturbance has occurred in order to facilitate an assessment of the risk to health.
- 11.5 The asbestos management plan must incorporate procedures for asbestos removal and maintenance and service work that may disturb ACM. This plan must also form part of the induction process for contractors and must be undertaken prior to contractors dealing with ACM.
- 11.6 A visual inspection must be undertaken by an appropriately qualified inspector as part of the review. Asbestos inspections are required for buildings that are likely to contain asbestos. Australian Capital Territory legislation also requires that all buildings suspected of containing ACM must have inspections conducted.
- 11.7 All asbestos inspections are not the same and the type of asbestos inspections undertaken during occupation will be different to the type of asbestos inspections required before renovations are undertaken.
- 11.8 A person in control of non-residential premises must have an asbestos management plan (AMP) in place and operational for the premises in question.
- 11.9 A review of the AMP must be undertaken by an appropriately qualified inspector if an asbestos product has been disturbed or removed. In addition, a view of an AMP must be undertaken no later than five (5) years after the:
- AMP was made; or

- Last review finished, if already reviewed since the AMP was made.

11.10 Under occupational health and safety legislation, employers must undertake a risk assessment of all hazardous substances and the legislation specifies what must be considered in an assessment, when it must be reviewed and how often it must be reviewed.

## 12. GST And Other Taxes And Duties On Property Transactions

For further information please contact Uniting Resources Financial Management Services.

## 13. Funding Options For Property Transactions

- 13.1 Uniting Church Grants. The Synod Mission Resources Fund (SMRF) provides funding for church bodies subject to certain criteria being met.
- 13.2 Government Capital Grants. From time to time church bodies can secure capital funding from the government for projects that meet a community need. These grants often come with conditions that can form an ongoing liability for a church body. Any church body that is contemplating applying for such grants must seek guidance in the first instance from URPS and will be required to have any such grant executed by the Property Trust.

## 14. Heritage Matters

- 14.1 The Property Trust holds many heritage listed properties and takes seriously its obligations in this respect.
- 14.2 Heritage places and items of significance in New South Wales and the ACT are listed on their respective Heritage Registers.
- 14.3 The Heritage Register replaces the old system of permanent conservation orders as a means of listing items of significance.

- 14.4 There are minimum standards of maintenance and repair applying to heritage listed properties and responsible bodies are required to comply with these minimum standards as a matter of absolute obligation.
- 14.5 Any church body approached by the Heritage Council or National Trust must refer such bodies to URPS for further consultation. It is not recommended that individual church bodies enter into discussion on heritage matters in isolation.
- 14.6 The Religious Property Advisory Panel (RPAP) is a subcommittee of the Heritage Council and acts on behalf of major religious denominations. A member of URPS is the Synod's representative on this body.  
The RPAP provides advice on the protection and management of religious heritage property, assists with assessments of grant applications affecting religious heritage buildings and acts as a point of liaison for religious organisations on heritage issues.

## 15. Procurement Of External Services For Property Projects

- 15.1 Church bodies contemplating engaging an external service provider for property matters must ensure that the contractor has experience in the style, nature and scale of the project being contemplated and has recently completed works to the satisfaction of clients. Where a building or construction project is involved, the Project Manager for the project would normally undertake such task and/or assessments.
- 15.2 All external contractors engaged must be genuine independent contractors and hold appropriate licences, qualifications and insurances and should not otherwise be engaged. Any contractor engaged to provide services must provide a work method statement and scope of works for the services being provided.
- 15.3 Prior to accepting a tendered price for building works, it is the responsibility of the church body to assess whether the preferred contractor has the financial capacity to complete the project.
- 15.4 Any tender process should include at least three (3) tenders and it must be ensured that any party tendering is free of any material conflicts of interest that may compromise the competitive process.
- 15.5 URPS maintains a register of preferred contractors and consultants for property projects no matter the size. Please contact URPS for further information.

## 16. Restrictions On Usage Of Church Property

16.1 There are a number of internal restrictions that can apply to property usage within the Synod, these include but are not limited to:

- Alcohol consumption and licenses (see Annexure 10);
- Smoking and other drugs;
- Restrictive covenants on sales.

For further information please contact URPS.

16.2 Church bodies are expected to comply with all restrictions as to property usage set down by external regulatory bodies.

16.3 Council land zonings limit the uses that can take place on land within the local council area to ensure that cities are well planned and that adjoining uses are complementary. Before purchasing or leasing land, church bodies must ensure that the proposed use is permissible under council zoning.

16.4 Council land zonings sometimes permit uses of land with consent. This consent does not make such uses permissible on a specific lot of land unless a Development Application has been approved. This approval can be issued conditional upon certain conditions such as but not limited to hours of operation, noise and traffic being met. Therefore any church body seeking to change the use of a building or purchase an existing building must seek approval of URPS and secure council permission and understand the conditions which may apply to an existing approval. All Development Applications must be approved by URPS and executed by the Property Trust.

16.5 Strata schemes within Council zoning regulations provide limitations on the types of uses permissible for such buildings. For further advice on strata schemes, please contact URPS.

16.6 Purchasing for investment or program purposes requires additional information compared to a standard purchase and needs to be provided before approval is considered. For further information please contact URPS.

16.7 Approvals in principle (to enable church bodies to purchase properties before actual approval has been obtained from the Property Trust) are provided in exceptional circumstances. For further information please contact URPS.

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## 17. Transfer Of Property

17.1 Where it becomes necessary or desirable for a property asset to be transferred from one church body to another, there are three (3) options available:

- Transfer without compensation;
- Transfer with fair market based compensation;
- Transfer with reference to market but final price at the discretion of the responsible body, presbytery, Board or URPS as applicable. This option should only be used in exceptional circumstances and not without a current market valuation as a reference. Separate approval is required from Uniting Resources where a decision is made to transfer at less than market value, if not obtained with the initial approval to transfer.

17.2 Each transfer is to be assessed on its merits and must take into consideration the following:

- The present resources of both parties to the transfer;
- The missional and strategic impact and considerations;
- The results of an assessment projecting future needs of both parties for resources or assumptions on the feasibility that may change or external circumstances that may change.